

8335

RECORDED & INDEXED Filed & Recorded

MORTGAGE ON TANK CARS

MAY 20 1976 3 00 PM

~~INTERSTATE COMMERCE COMMISSION~~

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned Mortgagor, RICHARD W. McMAHON, of Tulsa, Oklahoma (hereinafter sometimes referred to as "Mortgagor"), has this day borrowed from MERCANTILE BANK & TRUST COMPANY, Tulsa, Oklahoma (hereinafter sometimes referred to as "bank"), the sum of One Hundred Seventy Thousand and no/100 Dollars (\$170,000.00), and to evidence his obligation therefor has made, executed and delivered to MERCANTILE BANK & TRUST COMPANY his promissory note of even date herewith in the principal amount of One Hundred Seventy Thousand and no/100 Dollars (\$170,000.00), with interest on the unpaid balance at an annual rate of interest, computed monthly, equal to the prime rate of interest regularly established from month to month by the bank for unsecured commercial loans with maturities of 90 days or less to borrowers deemed to be large commercial borrowers and prime credit risks, plus two percent (2%), principal and interest being payable in seventy-two (72) consecutive monthly installments, as follows: the first through twelfth installments being installments of interest only, and the thirteenth through seventy-second installments being installments of interest plus one-sixtieth ($1/60$) of principal each, with the first installment being due and payable on August 10th, 1976, and with the seventy-second and final installment of unpaid principal and interest, if not sooner paid, being due and payable on May 12th, 1982, and which promissory note contains a provision for payment of an attorney's fee of ~~Ten and no/100 Dollars (\$10.00) and ten percent (10%) of the principal and interest due thereon in case said note is collected~~ by or through an attorney.

NOW, THEREFORE, in consideration of the premises and to secure the prompt and punctual payment of the note above described, payable to the order of said bank, as aforesaid, and any note or notes which may hereafter be given by the undersigned payable to the order of said bank prior to the release of this mortgage, and of each and every installment of principal and interest of said note and of any extensions or renewals from time to time of any of said notes, or any installment thereof, Mortgagor does hereby mortgage, assign, transfer, set over and convey unto the said Mercantile Bank & Trust Company, its successors and assigns, all and singular the following described property of the undersigned, to-wit:

Eight (8) Tank Cars, described as DOT
(Department of Transportation) Class 112A 400-W,
30,000 gallons capacity, Serial Numbers WIGX
1000 through 1007, inclusive,

together with all fittings and appliances now or hereafter connected therewith, and any replacements of any parts thereof or additions thereto.

TO HAVE AND TO HOLD said property hereby granted, transferred, assigned and mortgaged unto said Mercantile Bank & Trust Company, its successors and assigns, forever, free and clear of all encumbrances of whatsoever kind or character, and the undersigned Mortgagor does hereby covenant and agree with said Mercantile Bank & Trust Company, its successors and assigns, as follows:

FIRST: That the undersigned Mortgagor is the owner and legally in possession of each and all of said tank cars, and that there are no encumbrances or liens of any kind or character against any of said property, except that certain agreement covering the operating, leasing and handling of said tank cars above described between the Mortgagor and Mallard Transportation Company dated the 10th day of

January, 1968; that the undersigned has good right and lawful authority to transfer, convey, assign and mortgage the same; that the residence of the undersigned Mortgagor is at Tulsa, Oklahoma;

SECOND: That Mortgagor will not voluntarily create or suffer to be created or to arise any lien or charge upon any of the property described herein and mortgaged hereby having priority to or preference over the lien of these presents upon said mortgaged property, or any part thereof; that Mortgagor will pay all lawful claims and demands of all persons whomsoever which, if unpaid, might by law be given preference as to this mortgage as a lien or charge upon said mortgaged property, or any part thereof;

THIRD: That Mortgagor will at all times during the time this mortgage is in force and effect keep all said tank cars in first-class condition and repair;

FOURTH; That Mortgagor will forthwith cause to be painted upon the sides of each of said cars, in letters not less than one inch in height, the words "Mercantile Bank & Trust Company, Mortgagee", so located as to be readily visible and to indicate plainly that said cars are mortgaged to the bank, and will, at Mortgagor's own cost, cause said markings to be maintained so long as this mortgage remains in force and effect; and Mortgagor further covenants that the markings upon said cars, above described, indicating the name of the owner and the numbers thereof, shall not be changed without the previous written consent of the bank, and shall be maintained by Mortgagor at his own cost, so that the same shall be plainly visible so long as this mortgage remains in force and effect:

FIFTH: That Mortgagor will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon any part of said mortgaged property, as well as any demurrage or freight

charges against the same, so that the priority of this mortgage shall be fully preserved in respect to said property;

SIXTH: That Mortgagor will exercise all reasonable care in the protection and possession of said property so long as said indebtedness remains unpaid, and that the property so mortgaged and pledged by this instrument shall not, during such time, be sold, encumbered, or otherwise disposed of;

SEVENTH: That if default be made in the payment, when due, of any installment of principal or of interest of any note secured hereby, or if Mortgagor should fail to observe or perform any of the covenants or agreements herein contained, or in any other mortgage securing any of the indebtedness secured hereby, or if any proceeding be commenced by or against Mortgagor for the adjudication of Mortgagor as a bankrupt, or for any other relief of Mortgagor as a debtor under the Code of Bankruptcy, or if a receiver be appointed for a substantial portion of the property of Mortgagor, or if any of the mortgaged property be lievied upon or attached and the same is not within five (5) days thereafter released therefrom (all of which shall be deemed "events of default"), then in any such event all sums provided by said note or notes to be paid may, at the option of the holder thereof, and without notice to Mortgagor, become due and payable, and the bank shall thereupon be entitled to any or all of the following remedies, which shall not be exclusive, but shall be cumulative of any other rights or remedies at law or in equity which the bank may have, to-wit:

- (a) To demand within ten (10) days thereafter to receive from Mortgagor peaceable possession of all said tank cars at some place designated by the bank upon the tracks in Tulsa County, Oklahoma, Mortgagor agreeing that he will, at his own expense, within said ten (10) days deliver possession of said cars to the bank at the place so designated, and in case of the failure

of Mortgagor so to do, possession of said cars may be taken by the bank wherever the same may be found, and at the election of said bank may be removed by said bank to Tulsa County, Oklahoma, at the expense of Mortgagor, and for the purpose of having said cars removed to Tulsa County, Oklahoma, Mortgagor agrees that he will, upon demand, deliver to the bank or its assigns, possession of all records he may have, showing or tending to show the location of said cars, and said bank, by any of its officers, in the name of Mortgagor, may give any orders, directions, or instructions to any railroad company or other person, and may sign Mortgagor's name to any documents and agreements for the purpose of removing said cars, and may pay the expense of such removal and recover same from the proceeds of the sale of any of the mortgaged cars.

- (b) The bank, its agents, attorneys or representatives, shall have the right and power, with or without exercising any of the rights given in the preceding subsection, to sell at public auction, to the highest bidder, for cash, at one or more sales, all or any part of the mortgaged property, upon giving notice of the time and place thereof, by posting same at five (5) public places in the county in which such sale is to be held, at least ten (10) days prior thereto, one of which places shall be the place where such sale is to be held, or by giving notice at least ten (10) days before such sale, by publication thereof in a newspaper published at least weekly in such county, and of general circulation therein, and by giving such other notice as may be required by law at the place where such sale shall be held. Any such sale may be held at the courthouse door, or any place where sales at public auction are customarily held in any county in any state in which any of the property to be sold may at the time be located; or at the courthouse door in the County of Tulsa, State of Oklahoma. Notice to Mortgagor of any such sale shall be deemed to have been duly given if, not less than ten (10) days before the date of such sale, a copy of such notice shall be delivered to Mortgagor or mailed by ordinary mail addressed to Mortgagor at Tulsa, Oklahoma. It shall not be necessary that the bank, or the person conducting said sale, be in actual or constructive possession of said property at the time of such sale, or that the same be physically present at such sale, nor shall it be necessary, if said sale be held in Tulsa County, Oklahoma, that said property be actually present in the county of the state in which said sale is held; and the title and right of possession to such property shall pass to the purchaser at such sale as completely as if said property had been actually present and delivered at such sale, and Mortgagor covenants and agrees to deliver all of such property to the purchaser within a reasonable time

thereafter, and for that purpose to execute and deliver all proper instructions, orders, or documents to any railroad company, or other person, and such other and further assurances as may be proper or required; and such purchaser shall be entitled to exercise all the rights and privileges herein given to the bank in the preceding subsection (a) hereof for the recovery of possession of any of said cars. At any such sale, the bank, if the highest bidder therefor, may become the purchaser of any such property. The proceeds of any such sale shall be applied:

First: To the payment of all costs and expenses of such sale, including any expenses which may have been advanced or incurred by the bank in recovering possession or custody of, or in causing the return of, said property to the place of sale, if any, together with an attorney's fee of Ten Dollars (\$10.00) and ten percent (10%) of the amount realized at such sale, as a fee for the foreclosure hereof.


Second: To the payment of the indebtedness secured by this mortgage, with interest and attorney's fees.

Third: Any excess shall be paid to Mortgagor or his assigns.

(c) The bank may proceed by action or actions in any court or courts of competent jurisdiction to foreclose this mortgage.

The provisions of this mortgage shall be binding upon the heirs, executors, administrators, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of the successors and assigns of the bank.

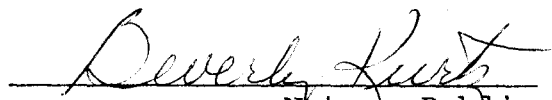
IN WITNESS WHEREOF, the undersigned, RICHARD W. McMAHON, has executed this instrument and delivered same the 12th day of May, 1976.


RICHARD W. McMAHON

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and
for the said County and State, on this 12th day of
May, 1976, personally appeared RICHARD W. McMAHON,
to me known to be the identical person who executed the
within and foregoing instrument, and acknowledged to me
that he executed the same as his free and voluntary act
and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and
year above written.



Notary Public

My Commission expires:

January 26, 1980